

Press and Information Division

PRESS RELEASE No 84/03

2 October 2003

Interim Order of the President of the Court in Case C-320/03 R

Commission of the European Communities v Republic of Austria

**AUSTRIA MUST SUSPEND UNTIL 30 APRIL 2004 THE SECTORAL BAN
IMPOSED BY THE REGULATION OF THE FIRST MINISTER OF THE TYROL
LIMITING USE OF THE A 12 MOTORWAY IN THE INN VALLEY**

The parties are invited to engage in consultation with one another with a view to finding measures capable of reconciling their conflicting interests and, failing that, to submit relevant information to the Court by 6 February 2004 at the latest. The measure decided today may be extended, revoked or amended on that basis.

After the annual limit value for nitrogen dioxide for 2002 had been exceeded on the A 12 motorway in the Inn valley, the First Minister of the *Land* of Tyrol - acting on the basis of the Austrian Emission Control Act: Air, which transposes the Community's directives on ambient air quality into Austrian law - adopted, on 27 May 2003, a regulation prohibiting as from 1 August 2003 the use of a section, approximately 46 kilometres long, of the A 12 motorway in the Inn valley by heavy goods vehicles carrying certain types of goods¹. The regulation does not apply to heavy goods vehicles whose journeys start from or terminate in the territory of the City of Innsbruck or in the districts of Kufstein, Schwaz or Innsbruck-Land; these may continue to circulate.

On 24 July 2003, the Commission asked the Court of Justice to declare that Austria's sectoral ban on circulation is in breach of the principles of the free movement of goods and freedom to provide services in the Community's road transport sector.

The following day, the Commission asked the President of the Court to order Austria immediately to suspend the regulation pending a decision on the merits of the case.

¹ The goods include the wastes listed in the European Waste Catalogue, cereals, logs, bark and cork, ferrous and non-ferrous minerals, pebbles, soil, rubble, motor vehicles and trailers, or structural steel.

On 30 July 2003, as an interim measure, the President of the Court ordered Austria to stay enforcement of its circulation ban until the order terminating the interlocutory proceedings had been made.

Having on 27 August 2003 heard Austria and the Commission, which was in the meantime supported by Germany and Italy, the President of the Court is **today making a second interim order.**

It appears at first view that the Austrian regulation limits the freedom of movement provided by the EC Treaty and secondary legislation and that that obstacle **could result in indirect discrimination.** The regulation applies to all carriers, whatever their nationality, and therefore also penalises Austrians. Nevertheless, as a result of the type of transport covered and the scope of the derogations, the regulation may result in greater disadvantages for carriers from other Member States, without justification.

In a first examination into whether Austria has infringed Community law, the order notes that the regulation seeks to satisfy obligations resulting from Community directives relating to air quality. **In principle, requirements for protection of the environment and/or the protection of health prevail over economic considerations.**

On the other hand, the short time period between adoption and entry into force of the regulation may considerably reinforce its negative effects on the activities and organisation of the carriers concerned. A two-month period appears very short for putting in place structural adaptations (for example, greater availability of railway transport in the section concerned), which can be planned only in the medium term and in stages. In addition, measures directly affecting the transport of goods between Member States call for a degree of prior coordination at Community level, which does not appear to have taken place in this case. Thus, the possibility of an infringement by Austria cannot automatically be discounted.

The current situation as regards ambient air pollution in the area in question is the outcome of a gradual process and can only, it appears on first analysis, be satisfactorily addressed in stages over the medium term.

Structural measures will probably be necessary and all parties to the present proceedings must contribute to the search for appropriate solutions, which will necessarily represent a compromise between conflicting interests and may by definition give rise to certain disadvantages both for the functioning of the internal market and for the interests of some groups of economic operators.

In those circumstances, while recognising that the contested regulation may in the short term help improve ambient air quality in the area in question, the President **finds that a structural approach over the medium term is essential and would not be jeopardised by the temporary non-application of that regulation.**

On the other hand, there is a **significant risk that many undertakings will close permanently** and that an irreversible **structural change** in conditions of transport and trade flows of goods within and across the area in question will occur.

Given that risk of damage which would not easily be corrected, the President extends the instruction issued to Austria to suspend enforcement of the sectoral ban on circulation until 30 April 2004.

Nevertheless, given the significant ambient air quality problems in the area in question, the parties are invited to consult each other for the purpose of drawing up measures which may reconcile their conflicting interests, even if only temporarily, and to notify the Court of any compromise reached.

Failing that, the parties are invited to submit to the Court, by 6 February 2004 at the latest, information on changes in ambient air quality in the area in question, the estimated impact of the ban on night travel during 2003 and the prospects for developing rail transport or transport by other routes.

On the basis of that new information and observations, **the measure decided by today's order may be extended, revoked or amended.**

Note: This order in no way prejudices the decision that will be taken by the Court on the merits of the case. The judgment will be delivered by the Court at a later date.

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Available languages: DE, EN, FR, IT

*The full text of the interim order can be found on the internet (www.curia.eu.int).
In principle it will be available from midday CET on the day of delivery.*

*For additional information please contact Christopher Fretwell
Phone: (00 352) 4303 3355; Fax: (00 352) 4303 2731.*